could be of any age or sex) in such a position in the vehicle from which point he could be said to possess the ability or power to give a signal to overtaking traffic or to the driver of the vehicle of the approach of overtaking traffic. The ability to do a thing is indicative only of the potential and the capability. It does not dictate a duty to transform that capability into the actual performance or action. As I said in the course of arguments, a young woman may have the ability or potential to give birth to a child but that is totally different from the act of giving birth. The potentiality is inert, performance active.

It is a common spectacle on our roads to find heavily laden lorries carrying an extra load in the shape of a sleeping person at the rear on top of the goods or luggage. Sometimes even infants, boys and girls alike, are seen stationed at the rear of the lorries as mere static symbols of due compliance with the law or the condition of the licence.

The power vested in the licensing authority under section 119 to attach a condition to the licence is meant to serve the purpose of "securing" as far as section 119(iv)(e) of the Road Traffic Ordinance is concerned, the safety and convenience of all road users. The condition has to be related to the purpose and if it is divorced from the purpose or is incapable in its context to serve the purpose for which alone the power to fasten a condition is conferred on the Licensing Board, the condition so imposed is outside the scope and ambit of the authority which the legislature intended to confer on the Licensing Board and is to that extent invalid. In the absence of any legislation or rules prescribing the duties of attendants, condition No. 6 in the context in which it appears in the licence granted to the first appellant can in no way be said to promote or ensure public interest for the safety and convenience of those who try to overtake the goods vehicles.

A statutory power to impose conditions even though expressed in the widest terms is subject to certain well defined limitations and one of such limitations is that the condition must be such as fairly falls within the ambit of the statute. The construction of a statutory power to impose conditions is to be approached in the same way as that of a power to make bye-laws. The court is bound before reaching a decision on the question whether a regulation, bye-law or condition is *intra vires* to examine the nature, objects and scheme of an Act as a whole and in the light of that examination to consider exactly what is the area over which powers are given by the section under which a competent authority purports to act.

In *Commissioners of Customs and Excise* v. *Cure & Deeley, Ltd.*[1] it was observed by Sachs J:

"In the first place I reject the view that the phrase 'appear to them to be necessary' when used in a statute conferring powers on a competent authority, necessarily makes that authority the sole judge of what are its powers as well as the sole judge of the way in which it can exercise such powers as it may have. It is axiomatic that, to follow the words used by Lord Radcliffe in *A.-G. for Canada* v. *Hallet & Carey, Ltd.* [1952] A.C. 449 'the paramount rule remains that every statute is to be expounded according to its manifest or expressed intention.' It is no less axiomatic that the application of that rule may result in identical phrases receiving quite different interpretations according to the tenor of the legislation under consideration. As an apt illustration of such a result it is not necessary to go further than *Liversidge* v. *Anderson* [1941] 3 All E.R. 338 and *Nakkuda Ali* v. *M.F. de S. Jayaratne* [1951] A.C. 66 in which cases the words 'reasonable cause to believe' and 'reasonable grounds to believe' received quite different interpretations. To my mind a court is bound before reaching a decision on the question whether a regulation is *intra vires* to examine the nature, objects, and scheme of the piece of legislation as a whole, and in the light of that examination to consider exactly what is the area over which powers are given by the section under which the competent authority is purporting to act. In taking that view I respectfully apply the line of approach adopted by Lord Greene, M.R., in the cases previously cited, where he referred to the need for the acts of the competent authority to fall within the four corners of the powers given by the legislature. It is also to be noted that the observations of Lord Greene in *Point of Ayr Collieries, Ltd.* v. *Lloyd-George* [1943] 2 All E.R. 547 which were relied on by counsel for the commissioners were confined to 'regulations of this character', a phrase which in the context can refer only to emergency legislation."

The courts, in the words of Farwell L.J. in *Dyson* v. *Attorney-General*,[2] are the only defence of the liberty of the subject against departmental aggression. The appeal by the first appellant is also allowed. The order of the learned magistrate is set aside and the conviction quashed. The fine, if paid, is to be refunded to him. There will be an order of acquittal and discharge in favour of both the appellants.

Orders accordingly.

Solicitors: *Lovelace & Hastings.*

RE ABDUL WAHAB; *EX PARTE* UNITED MALAYAN BANKING CORPN. BHD.

[O.C.J. (Sharma J.) May 9, 1972]

[Ipoh — In Bankruptcy No. 177 of 1971]

Bankruptcy — Petition — Withdrawal of, after being presented — Leave to — Discretion of court — Bankruptcy Act, 1967, s. 6(7).

Where there is no evidence before the court that the debtor has no other creditors the application to withdraw the petition would be refused.

Section 6(7) of the Bankruptcy Act, 1967 enacts that a creditor's petition, after it has been presented, cannot be withdrawn without the leave of court... The court has a discretion in the matter of granting leave for the withdrawal of the petition. Each case has to be considered on its merits. In considering the applications under section 6(7) of the Bankruptcy Act, it is the duty of the court to see whether the interests of the general body of the creditors would be served or not by the grant of the application. The mere fact that the debtor has settled with the creditor is not enough for granting such leave. The creditor has no right to get his debtor adjudicated a bankrupt and pending such adjudication to receive from him the sum in adjustment of his claim as he is not entitled to use the petition as a lever to secure preferential treatment for himself.

PETITION.

K. C. Chin (Miss) for the petitioning creditors.

Judgment-debtor absent.

Sharma J. (delivering oral judgment): The judgment-debtor in this case has been served by substituted service which became effective on 25th April, 1972. The debtor is absent. The petitioning creditors, however, have now applied for leave to withdraw the

petition on the ground that the debtor had on 13th April, 1972 paid them a sum of $1,500. The petition is based upon a bankruptcy notice and the amount of the debt alleged to be due to the petitioner is $4,229.60.

Section 6(7) of the Bankruptcy Act, 1967 enacts that a creditor's petition after it has been presented cannot be withdrawn without the leave of the court. It has become quite a frequent occurrence in this court that applications for leave to withdraw bankruptcy petitions are made as if leave was to be granted as a matter of course. It should, however, be understood that a petition once it has been presented deprives the petitioner of an unfettered control over it. The bankruptcy proceedings are for the administration of the estate of the debtor and not for the benefit of any particular creditor. The proceedings are for the benefit of the general body of creditors. Very often petitions are made not with the *bona fide* intention of getting the debtor's estate administered under the bankruptcy laws but for the collateral purpose of bringing pressure to bear upon the debtor. It is to check this abuse of the process of the court that section 6(7) of the Bankruptcy Act has been enacted. The court has, of course, a discretion in the matter of granting leave for the withdrawal of the petition. Each case has to be considered on its merits. In considering the application under section 6(7) of the Bankruptcy Act it is the duty of the court to see whether the interests of the general body of the creditors would be served or not by the grant of the application. The mere fact that the debtor has settled with the creditor is not enough for granting such leave. The creditor has no right to get his debtor adjudicated a bankrupt and pending such adjudication to receive from him the sum in adjustment of his claim as he is not entitled to use the petition as a lever to secure preferential treatment for himself.

There is no evidence before me in this case that the debtor has no other creditors. He alone could furnish this information. He has already committed an act of bankruptcy and is not in court. If he can pay all his creditors he should have no difficulty to get a discharge. In the circumstances I am not readily disposed to grant leave to the withdrawal of the petition. The application is refused and a receiving and adjudication order made against the debtor.

Application refused.

Solicitors: *Yeap & Yeap.*

V. SP. SUPPIAH CHETTIAR v. K. S. NAVARADNAM

[A.C.J. (Sharma J.) May 10, 1972]

[Ipoh — Civil Appeal No. 7 of 1972]

Moneylenders — Promissory notes stamped after execution — Whether admissible in evidence.

Stamps — Stamping promissory notes 'immediately' or 'forthwith' after execution — Meaning of — Stamp Ordinance, 1949, ss. 2, 41 and 52.

Evidence — Documents — Admissibility of promissory notes stamped after execution.

The appellant/plaintiff brought an action in the sessions court claiming a sum of $2,492.20 on three promissory notes executed by the respondent/defendant on various dates. An objection was taken by defendant's counsel, under section 52 read with section 41 of the Stamp Ordinance, to the admissibility of the three promissory notes on the ground that they were not stamped "before or at the time of" their execution by the defendant. The plaintiff admitted that the three promissory notes were stamped not before but after their execution and on the very same day of their execution.

The learned president held the promissory notes inadmissible and dismissed the plaintiff's claim with costs.

The plaintiff appealed.

The question in this case was whether the act of stamping by the appellant was substantially one transaction with the act of execution by the respondent.

Held, allowing the appeal: (1) there was sufficient compliance by the appellant with section 41 of the Stamp Ordinance. The execution and the stamping cannot but be regarded as one transaction;

(2) therefore, the order of the learned president must be set aside and judgment entered for the appellant in the sum of $2,492.20 with interest at 6% from the date of the filing of the action to the date of realisation and costs.

Cases referred to:-

(1) *R.* v. *The Justices of Berkshire* (1878) 4 Q.B.D. 469, 471.
(2) *Thompson* v. *Gibson* 151 E.R. 1045, 1047.
(3) *Barker* v. *Lewis & Peat* (1913) 82 L.J. 843, 845.
(4) *Page* v. *Pearce* 151 E.R. 1211.
(5) *Ex parte Lamb, In re Southam* (1881) 19 Ch. D. 169, 173.
(6) *Re Muscovitch and Muscovitch, Ex parte Muscovitch and Muscovitch, Bankrupts* v. *Official Receiver* [1939] 1 All E.R. 135.
(7) *Scott* v. *Scott* [1921] P. 107 at p. 124.
(8) *R.* v. *Arkwright* (1849) 18 L.J.Q.B. 26 at p. 28.
(9) *Chapman* v. *Robinson* (1859) 28 L.J. Mag. Cases 30.
(10) *Ex parte Rolph, In re Spindler* [1881] W.N. 136.
(11) *Re Tunnel Mining Company, Pool's Case* (1887) 35 Ch. D. 579, 581.
(12) *Surij Mull* v. *Hudson* (1901) I.L.R. 24 Mad. 259, 261.
(13) *M. Takim & Co.* v. *Fazal Kassam Velji* [1955] A.C. 617.

MAGISTRATE'S CIVIL APPEAL

N. H. Chan for the appellant.

S. Theivanthiran for the respondent.

Sharma J. (delivering oral judgment): The plaintiff filed an action in the sessions court claiming a sum of $2,492.20 on three promissory notes executed by the defendant on 4th December, 1969, 4th August. 1970 and 24th August, 1970 respectively. The defence to the plaintiff's claim was the usual defence one finds in any money-lender's action. In the course of the cross-examination of the plaintiff an objection was taken by